

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION

WACKENHUT SERVICE, INC. & ALUTIIQ SECURITY AND
TECHNOLOGY, LLC 1/

Joint Employers

and

AMERICAN UNION OF SECURITY OFFICERS (AUSO)

Petitioner

Case No. 17-RC-12338

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Joint Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 3/

All full-time and regular part-time guards and security officers, including sergeants and sergeants of the guard employed by Wackenhut Services, Inc. and Alutiiq Security and Technology, LLC located at Fort Leonard Wood Army Base in Fort Leonard Wood, Missouri, but EXCLUDING office clerical employees, lieutenants, captains, managers and supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

American Union of Security Officers (AUSO)

or

International Union of Security, Police and Fire Professionals of America (SPFPA) 4/

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge of the Subregion who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 8600 Farley Street - Suite 100, Overland Park, Kansas 66212-4677 on or before April 13, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 20, 2005.

Dated April 6, 2005

at Overland Park, Kansas

/s/ D. Michael McConnell
Regional Director, Region 17

1/ The name of Joint Employer Alutiiq Security and Technology, LLC appears as amended at the hearing.

2/ Joint Employer Alutiiq Security and Technology, LLC, hereinafter Alutiiq, is an Alaska Limited Liability Company engaged in the provision of guard and security services. Joint Employer Wackenhut Service, Inc., hereinafter Wackenhut, is a Florida Corporation, also engaged in the provision of guard and security services. At hearing the parties stipulated, and I find, that Alutiiq and Wackenhut are Joint Employers for the purposes of collective bargaining with respect to a group of employees and that they provide guard and security services pursuant to a contract with the United States Army at Fort Leonard Army Base in Fort Leonard Wood, Missouri. The Joint Employers employ approximately fifty-seven employees in the unit found appropriate.

3/ The American Union of Security Officers (AUSO), the Petitioner herein, requests a unit of the following employees: All guards employed by Wackenhut Services, Inc. and Alutiiq Security and Technology LLC located at Fort Leonard Wood Army Base in Fort Leonard Wood, Missouri, but excluding lieutenants, captains, office-clerical employees, supervisors and managers as defined by the Act.

4/ On March 24, 2005, after the hearing in this matter had commenced, the International Union of Security, Police and Fire Professionals of America (SPFPA) submitted a letter to the Regional office, with a corresponding showing of interest, expressing their desire to intervene in this matter. Pursuant to Section 11023.4 of the Board's Casehandling Manual, Representation Proceedings, Part Two, the undersigned has granted this request, according the aforementioned labor organization Participating Intervenor status, and providing them placement on the ballot pursuant to the terms of this Decision and Direction of Election.

ISSUE

The only issue involved herein is whether the following five sergeants employed by the Joint Employer, Lawrence Schadeegg, Edwin Warden, Richard Roberts, Michael Wiggins, and James Scott, should be included in the petitioned-for unit, or excluded as statutory supervisors. The Petitioner contends that the sergeants are supervisors within the meaning of Section 2(11) of the Act, while the Joint Employers contend that the sergeants do not possess any indicia of supervisory status. For the reasons discussed below, I find that the Petitioner has failed to demonstrate that the sergeants are statutory supervisors. Accordingly the sergeants will be included in the petitioned-for unit.

THE JOINT EMPLOYERS' FORT LEONARD WOOD OPERATIONS

Joint Employer Alutiiq is under contract with the United States Army at Fort Leonard Wood Army Base in Fort Leonard Wood, Missouri. Pursuant to that contract, Alutiiq provides armed security services to control access to the Fort Leonard Wood Army Base, and Joint Employer Wackenhut is a subcontractor to Alutiiq in the performance of these duties. The Joint Employers have been performing guard services pursuant to the contract since approximately March 22, 2004. The Joint Employers employ approximately sixty-five individuals at Fort Leonard Wood, including a project manager, captain of the guards, a human resources/administrative employee, five lieutenants, five sergeants, and fifty-two security officers.⁵

The parties stipulated that the project manager, captain, and lieutenants are supervisors within the meaning of Section 2(11) of the Act, because they possess one or more of the following supervisory indicia; the authority to hire, fire, transfer, suspend, layoff, assign work,

⁵ It appears that the terminology “guards” and “security officers” are sometimes used interchangeably by the parties.

discharge and discipline employees, and they also utilize their independent judgment in exercising such authority. Accordingly, the project manager, captain, and lieutenants are excluded from the unit as statutory supervisors.

The Joint Employers' staff and chain of command are organized based upon rank. At the top of the chain of command is project Manager Daniel Rimmer, who is responsible for oversight of the contract between the Government and the Joint Employers. Captain of the Guards James North, reports to Rimmer, and is the highest ranking Wackenhut employee at the facility. The Joint Employer's lieutenants, also sometimes referred to as shift supervisors, are responsible for, among other things, devising the weekly schedules, issuing weapons to employees, approving payroll, and overseeing each shift. Beneath the lieutenants are the sergeants, whose supervisory status is at issue. Finally, the Joint Employers employ security officers who control access to the installation through identification checks and perform vehicle inspections.

SERGEANTS

The Joint Employers employ five sergeants at the Fort Leonard Wood facility. There are typically two sergeants on each of the Employers' shifts. One of these sergeants is appointed "sergeant of the guard" for the duration of their assigned shift. The assignments as sergeants of the guard are rotated. Thus, during a typical five-day work week, a sergeant may serve as sergeant of the guard approximately three times. On the days that a sergeant is not serving as sergeant of the guard he typically works on a team with security officers, performing the same duties as those security officers.

As sergeant of the guard, the sergeant conducts the daily briefing and, using the schedule prepared by the lieutenant, deploys security officers to their work locations and assigned

duties, including lanes, truck inspections, vehicle inspections or the visitor's desk. Sergeants make the determination of where to assign officers by rotating them, so that all security officers have an opportunity to work at each station. In addition to assigning work locations, the sergeant of the guard is responsible for maintaining a daily journal to record information about the events on each shift. This journal is turned into the lieutenant at the end of the shift, who then forwards it to the captain. Examples of items recorded in the journal include customer complaints, alarms, or employee performance problems and violations of company work rules. If an issue arises that could result in discipline of an employee, the sergeant records the facts, and passes them on to the lieutenant. The sergeant does not make a recommendation regarding discipline. Any discipline which is ultimately issued is left to the discretion of the lieutenant, captain, or project manager.

The sergeant of the guard does not have the authority to issue written reprimands, suspensions or terminations. The sergeant of the guard may, however, make "on-the-spot" corrections. The most common example of such a correction would be reminding an officer about a uniform violation. These "on-the-spot" corrections are not considered discipline, and are not typically reported on the daily journal.

Sergeants earn approximately two dollars more per hour than the security officers, but share the same benefits, hours, and other working conditions. Sergeants wear chevrons on their uniforms indicating their rank as a sergeant.

ANALYSIS

Section 2(11) of the Act states: "the term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to

adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.” It is well established that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, provided the authority is exercised with independent judgment on behalf of management and not in a routine manner. See Hydro Conduit Corp., 254 NLRB 433, 437 (1981). The Board has stated that there is a “duty not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act.” Azusa Ranch Market, 321 NLRB 811, 812 (1996).

The burden of proving supervisory status lies with the party asserting that such status exists. Kentucky River Community Care, Inc., 532 U.S. 706, 149 L.Ed. 2d 939, 121 S. Ct. 1861 (2001); Michigan Masonic Home, 332 NLRB 1409 (2000). It is incumbent upon the Petitioner, as the party asserting that sergeants are statutory supervisors, to demonstrate their supervisory status. Accordingly, any lack of evidence is construed against the Petitioner. Michigan Masonic Home, supra, 1409.

“Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” Phelps Community Medical Center, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991).

There is no contention that sergeants hire, transfer, suspend, lay off, recall, discharge, or reward employees or effectively recommend such actions, and the record contains no

evidence to support such a finding. Rather, the Petitioner maintains that sergeants exercise supervisory authority by utilizing independent judgment to assign and direct work, to counsel and issue discipline, and to evaluate security officers. Additionally, the Petitioner contends that the sergeants are regarded or described as supervisors in the Joint Employers' manuals and policy records, and possess other secondary indicia of supervisory status. Contrary to the Petitioner, the Joint Employers argue that sergeants are not supervisors, because they do not exercise genuine authority concerning any of the statutory indicia of supervisory status.

ASSIGNMENT AND DIRECTION OF WORK

In contending that sergeants assign and direct the work of security officers, the Petitioner relies, in part, on evidence concerning the ability of sergeants and sergeants of the guard to assign security officers to their work locations. Location assignments are made on a rotating basis to ensure that officers have an opportunity to work each location. Merely ensuring that staffing is adequate at all posts does not demonstrate the use of independent judgment, but rather an attempt to balance the workload. The Board has held that authority to balance work based on equitable considerations is not evidence of supervisory status under Section 2(11). See Providence Hospital, 320 NLRB 717 (1996) at 732. Similarly, decisions regarding lane openings and closings are routine. The record discloses that on certain days of the week, the traffic flow is heavier and requires the use of more lanes. Decisions regarding how many lanes to open are merely routine and do not require the use of independent judgment. With respect to sergeants' ability to respond to emergency situations such as the possible discovery of weapons during an inspection, the evidence demonstrates that rank and file security officers are also responsible for immediate responses in similar situations. Although some Joint Employer documents appear facially to confer upon sergeants the authority to assign and

direct work, the record is devoid of any direct evidence confirming that sergeants in fact exercise any of the authority referred to in the documents.

COUNSEL AND DISCIPLINE

Petitioner's argument that sergeants have the authority to discipline employees rests almost entirely on certain of the Joint Employer's documents that appear facially to suggest that sergeants have the authority to suspend and otherwise counsel and discipline security officers. However the only evidence adduced at hearing was that on occasion, sergeants may issue "on-the-spot" corrections, and report conduct which could potentially result in discipline to other officers. However, there is no evidence to equate "on-the-spot" corrections with discipline, nor is there evidence that any security officer has suffered any adverse consequences when he or she has received such a correction from a sergeant. See Ohio Masonic Home, 295 NLRB 390, 393-394 (1989). In fact, even when sergeants choose to document occurrences to forward to lieutenants, there is no evidence that this documentation constitutes discipline. Furthermore, such reports are typically not accompanied by a recommendation. Although the Petitioner has referenced several documents which appear facially to confer disciplinary authority upon sergeants, there is no corresponding evidence to suggest that the sergeants exercise such authority. Accordingly, I find that sergeants' actual authority concerning discipline is, at most, reportorial and insufficient to connote supervisory status. See Williamette Industries, 336 NLRB 743 (2001); Hogan Mfg., 305 NLRB 806, 807 (1991); Pepsi-Cola Bottling Co., 154 NLRB 490, 493-494 (1965).

PROMOTIONS

The Petitioner also asserts that sergeants have the authority to recommend employees for promotions. The Petitioner apparently relies on a Joint Employers' document, MOI #113,

(Petitioner Ex. 8) which states that sergeants will be requested to make recommendations pertaining to possible promotions. No evidence was adduced at hearing that sergeants had any involvement in actual promotions, or made promotion recommendations. Inasmuch, the document in and of itself, is not sufficient evidence to support a finding that the sergeants in fact exercise any authority regarding promotions.

SECONDARY INDICIA

Finally, the Petitioner maintains that there are secondary indicia of supervisory status which demonstrate that sergeants are statutory supervisors. The Petitioner notes that sergeants wear chevrons to signify their rank; have job descriptions similar to those of lieutenants, who are admitted Section 2(11) supervisors; are referred to as supervisors in some of the Joint Employers' internal documents; and spend a majority of their time working as sergeants of the guard. The Petitioner presented the job descriptions of both the sergeants and the lieutenants to show that there is little meaningful distinction between the two. In addition, the Petitioner produced several documents which indicate that any employee over the rank of corporal is considered a supervisor by the Joint Employers. These documents, however, are standardized documents, used corporate-wide, which have been modified to reflect the job realities at the Employers' various job sites throughout the United States. Although such secondary evidence is accorded some weight in examining whether the sergeants are statutory supervisors, it is not dispositive. See Chrome Deposit Corps., 323 NLRB 961, 963 fn. 9 (1997). Although the sergeants clearly literally "outrank" the security officers, the evidence fails to establish that sergeants independently exercise authority with respect to any of the statutory indicia of supervisory authority. See C.P.P. Security Services, 259 NLRB 315, 315-316 (1981). Accordingly, I find that the sergeants are not supervisors within the meaning of the Act. . See

Williamette Industries, supra, at 743; Polynesian Hospitality Tours, 297 NLRB 228, 228-229 (1989), enfd. 920 F.2d 71 (D.C. Cir. 1990). With respect to the amount of time sergeants spend working as sergeants of the guard, the record discloses that even when sergeants are working as sergeants of the guard, they do not exercise Section 2(11) authority.

CONCLUSION

Because the record fails to establish that sergeants possess authority with respect to any of the statutory indicia of supervisory status, I find that they are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, I find that the sergeants will be included in the petitioned-for unit, and I shall direct an election therein.